

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Non-Final Office Action of March 22, 2006 (hereinafter Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. Nonetheless, the Examiner is expressly authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 50-0951.

In the Office Action, Claims 10-13, 16, 18-21, and 24 were rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Published Patent Application No. U.S. 2001/0039514 to Barenbaum (hereinafter Barenbaum). Claims 1-9, 17, and 22 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Barenbaum, in view of U.S. Patent No. 6,611,811 to Deaton (hereinafter Deaton). Additionally, Claim 1 was rejected under 35 U.S.C. § 112, first and second paragraphs.

Applicants have amended each of the independent claims, Claims 1, 10, and 16, to emphasize additional aspects of the invention. Applicants also have amended dependent Claims 2, 4, 6, 17, 19, and 21 to further emphasize certain aspects of the invention and to maintain consistency among each of the claims. The amendments to Claim 1 also address the issues that were the basis of the rejection of the claim under 35 U.S.C. § 112. The claim amendments are fully supported throughout the Specification, as discussed herein, and do not introduce new matter.

### **Applicants' Invention**

It may be useful at this juncture to reiterate certain aspects of Applicants' invention. One embodiment of the invention, exemplified in amended Claim 1, is a computer-implemented method of providing promotional material to a consumer. The method can include generating in a merchant computer system a merchant request to

stimulate commerce for one or more merchant-specified products. The method also can include establishing a computer communications session between the merchant computer system and a third-party remote shopping stimulation system, wherein the merchant request is conveyed to the third-party remote shopping stimulation system.

Additionally, the method can include reading with the third-party remote shopping stimulation system consumer purchase information from a plurality of merchant computer systems. The consumer purchase information, more particularly, can comprise consumer identifying information as well as specific product information. The method also can include identifying one or more potential consumers who have previously purchased one or more of the merchant-specified products, the identifying being based at least in part on the consumer purchase information.

The method further can include determining that at least one of the merchant-specified products is an obsolete product. The determination that a product is an obsolete product, according to the method, is distinct from a mere determination that a product has reached an expiration date in the way that, for example, a gallon of milk may reach an expiration date. As described in the Specification, a product, even if it has not reached its expiration – indeed, as with a great many products, even if the product has no set expiration date or does not soon wear out – the product nevertheless may become obsolete. (See, specification, p. 11, line 14 – p. 12, line 6.) This has always been so with products such as clothing where fashion trends change almost seasonally. But this is ever more so in areas such as software and, for example, consumer electronics where the advent of new products and improvement modifications of existing products can render a product obsolete even though it still has considerable use-life.

For consumers, the process by which existing products become obsolete is the inevitable result of introducing new or alternate versions of a product that are more desirable from the consumer's point of view. But for merchants, the fact that a product

has or is expected to become within a period of time an obsolete product, poses particular problems. Not only may the now or soon-to-be obsolete product go unsold, but it burdens the merchant with the cost of carrying the product in inventory. The merchant is also concerned with eliminating the inventory of the obsolete product to make room for a newer or alternative version of the product.

The solution to the problem is for the merchant to quickly and effectively identify those potential customers who may wish to stick with an existing product notwithstanding that new or alternate versions of the product may be expected to be introduced soon, or who may be willing to purchase the existing product at a discount. The step of determining that at least one of the merchant-specified products is an obsolete product, according to one embodiment of Applicants' invention, is intended to provide such a solution. According to this step of the method, at least one merchant-specified product that can become obsolete because a new or alternate version is expected to be introduced within a predetermined time period is identified.

Thus, in the third-party remote shopping stimulation system, promotional material for the one or more potential customers identified as having previously purchased the product identified as an obsolete product can be generated. The method further includes then associating this promotional material corresponding with the identified consumers, and lastly, making the promotional material available to the identified consumers using a promotional material delivery system.

**The Claims Define Over The Prior Art**

Independent Claims 10 and 16, as noted above, were rejected as being anticipated by Barenbaum. As also noted, independent Claim 1, was rejected as being unpatentable over Barenbaum in view of Deaton.

Barenbaum is directed to a system and method for "managing excess capacity for events of natural expiration" and "alerting potential customers to the availability of digital deals." (See paragraphs [0018]-[0020]; see also Abstract.) Deaton is directed to a method and system for providing "customer incentives" by sequentially processing items in a customer order and determining allocations of certain discounts to customers.

Neither Barenbaum nor Deaton, however, discloses every feature recited in independent Claims 1, 10, and 16, as amended. For example, neither of the references teaches or suggests a method or system for determining when at least one product carried by one or more merchants is obsolete because a new or alternate product is expected to be introduced within a predetermined time period. Accordingly, neither of the references provide a method or system that so identifies at least one merchant-specified product as an obsolete product and instigates a promotional strategy in response.

As noted at page 5 of the Office Action, Barenbaum discloses the instigating of a commerce stimulation effort when based on a product's life-cycle. The basis of Barenbaum's determination of the end of a product's life-cycle, however, corresponds to events that are entirely different than the expected introduction of a new or alternate product. In Barenbaum, the end of a product's life-cycle occurs as a result of "natural expiration of an event," which Barenbaum explicitly describes as unsold seats for a single event, such as a concert or sports contest. (See, e.g., paragraph [0018]; see also Abstract.) (Emphasis Supplied.) Alternatively, with Barenbaum, the "natural expiration" of a product can coincide with the expiration date of a "perishable good." Nowhere, though, does Barenbaum describe a method or system for determining when at least one product carried by a merchant is obsolete because a new or alternate product is expected to be introduced within a predetermined time period.

Barenbaum admittedly discusses obsolescence, however, not in relation to a product, or even a service. Instead, Barenbaum describes that an "incentive becomes

obsolete" because the incentive is valueless after a certain time for events or goods that have a "natural expiration;" that is, no incentive can sell a seat to a concert that has already occurred or a perishable good that has reached its expiration date.

Deaton, as observed at pages 10 – 12 of the Office Action also discusses perishable goods. Deaton, like Barenbaum, however, is entirely silent regarding a method or system for determining when at least one product carried by one or more merchants is obsolete because a new or alternate product is expected to be introduced within a predetermined time period, as recited in each of the amended independent claims. Moreover, in the context of the promotion of non-perishable products, Deaton uses an analysis based on historical consumption rates. (See, e.g., Col. 70, lines 4-25; and Col. 18, line 52 – Col. 19, line 18.) Deaton, however, does not consider the expectation that a new or alternate product is introduced within a predetermined time period. It thus follows, that even when Deaton is combined with Barenbaum, the combination of references fails to teach or suggest determining that at least one merchant-specified product is an obsolete product when a new or alternate version of the at least one product is expected to be introduced within a predetermined time period, or identifying the at least one product as an obsolete product so that, in response, a promotion effort can be undertaken, as recited in each of the amended independent claims.

Accordingly, neither Barenbaum nor Deaton teaches or suggests every feature recited in independent Claims 1, 10, and 16, as amended. Applicants respectfully submit, therefore, that Claims 1, 10, and 16 each define over the prior art. Applicants further respectfully submit that whereas each of the remaining claims depends from one of the amended claims, the remaining claims likewise define over the prior art.

**CONCLUSION**

The Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. The Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

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Respectfully submitted,



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